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that there was no commonly accepted formula to which retailers of the story could hold fast. Without this unconscious prompter of memory, the truth was soon dissipated and the event is described according to individual notions.

CONTRACT

Rounding out the survey of situations of possible legal significance, attention must be given to the phenomenon of contract wherein a party or parties assumed a definite, but limited, obligation by virtue of agreement. These obligations are not to be confused with such status-obligations as sharing food with one's father-in-law. These latter may be entered upon by acts of agreement such as marriage, but once entered upon they were social and legal duties inherent in the new relations and carried on indefinitely. Standing economic obligations of a reciprocal nature are not "contractual" in nature. Contract is a specific obligation undertaken at a specific time; the contractual arrangement is ended when the obligation has been fulfilled.

In addition to the transfer of medicine powers and the payment of goods to settle a grievance there were other contract situations involving the rendering of personal services. Of these the most usual was curing; the next most important was the undertaking of responsibility to lead a revenge war party. A third was occult prophecy, or seer-seeing. And a fourth was sorcery for hire, or putting the enemy of another person on the spot through evil use of medicine powers. The last is not substantiated by any case material, but was attested by informants. Saddle and arrow making, if done on order, would also come under this heading.

In seeking a medicine man to perform a cure, there were certain solemn steps customarily followed. The proposal and acceptance followed an institutionalized pattern which marked the occasion ceremonially as one of significance. In the first place, it was well to use a "political lawyer" to get the thing done, especially so, if the practitioner sought was a well known medicine man. A friend of the medicine man was known throughout the band as the best person to send to the doctor. The doctor would listen to him with willing ears. The petitioner was also familiar with the ways in which the medicine man liked to have the smoke handed to him and could make the petition smooth in many ways. Such intermediaries received their compensation not from the sick person, but from the doctor, as a share in the gifts received by him.[8]

[8] The use of a pipe lighting assistant is of limited Shoshonean distribution. Cf. W. S. Park, *Shamanism in Western North America* (Chicago, 1938), p. 127.

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675 756 The go-between went to the doctor carrying in the right hand the loaded pipe or rolled cigarette. Before speaking, the emissary lighted the tobacco and puffed a few puffs. Then he told the medicine man what was wanted. Sometimes he added what might be expected in the way of gifts. Then, if he knew the ways of the medicine man, he proffered the smoke. If not, he first asked the medicine man how he would like the pipe handed to him. The medicine man was not universally obliged to accept. But some medicines required acceptance of a commission if the emissaries did certain things. Thus with Break Something, if the emissary circled his tipi to the left before entering, he was bound to accept. But usually a medicine man, if he thought the case too much for him or was not interested, refused to accept the smoke. The acceptance of the proffered smoke bound the contract, and the medicine man set out with the emissary to visit the patient. A curing contract was for four treatments to be given in two days. If at the end of two days the patient were not completely well, continuation for another two days' cure could be arranged, or the doctor withdrew to make way for another practitioner.

Break Something told how a practicing medicine man in an impasse called in consulting specialists. Break Something's medicine enabled him to specialize in pneumonia cases. One medicine man, after two days without success, sent his wife to get Break Something. He went and found the other medicine man waiting with the cigarette. This doctor told Break Something he would like his help in this pneumonia case. He took the smoke. "When medicine men smoked together they were as one doctor." They doctored for two days; first the one medicine man, then Break Something. The patient was cured. But there was no fee-splitting. All pay went to the first doctor. All Break Something got tangibly and immediately was the smoke. However, they had an agreement after that that Break Something could call on the other doctor for assistance at any time if he needed him.

The Comanches aver that medicine men who undertook a cure got paid regardless of the outcome, providing a fee had been agreed upon. But there was at least one exception in fact. Went To See His Son was called upon to doctor a sick man. He performed his cure for two days; the patient got well; the relatives were happy, so they gave Went To See His Son a fine horse. Then the patient died. The horse was a good one and Went To See His Son was running it in races. Then a relative of the defunct patient came and said he wanted the horse back. Obviously, he said, Went To See His Son had not cured the deceased, so he had no right to the horse. But the doctor was fond of the horse and said he was going to keep it; so the relative pulled his pistol and shot the horse dead. Went To See His Son was sorry to lose

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the horse, but he didn't do anything. Apparently he did not believe he had an established right to his horse, or we should have seen a more typical Comanche reaction to the killing. 675 ● 756

Nevertheless, when no fee had been indicated in advance, Comanche doctors were happy to receive gifts. But the true professional spirit prevailed, for it is said that if people were too poor to give gifts, it was of little concern to the medicine man. "He was glad to help out." But who knows perfection? Some medicine men hid when they thought they were going to be called upon for charity. However, if a female relative of a sick pauper asked the wife of a desired medicine man where the doctor might be, she she was "custom-bound" to tell.

While women were a nuisance in this way, medicine men had another way with others of them. A doctor could dream that if a certain woman came to ask for his help, the sick person would surely get well, providing the woman did his bidding during the cure. This is reputed to have been a not uncommon practice. Some of the more unscrupulous practitioners used it as a ruse to seduce reluctant women of their fancy, we were told. But whether a woman *had* to aid, or what she received for it, could not be determined.

On the other end of the contract, what happened when the promised fee was not given after the cure had been made? The Comanche practitioners were without legal means of restitution.

A Comanche of mean disposition would in native opinion have had recourse to sorcery, "but the honorable medicine man would forget it." Persons who failed to pay explicit fees, however, were the ones the doctors dodged, while the creditor medicine man never again took a case for the defaulters. The result was a normal, but guild-manifestation, of Malinowski's principle of withdrawal of reciprocal services in reprisal for deficiency of conduct.

The sale and transfer of supernatural powers among the Comanches was a form of contract in incorporeal property rights. As between close friends and relatives the offer and acceptance was informal and direct. It was when an ambitious youth yearned to purchase power of a strong medicine man with whom he had no close kinship that more formal steps were taken. First steps were taken by the neophyte's mother. She approached the head wife of the shaman. The woman thought it over. Then she learned from her husband what gifts would be required to satisfy him. These she described in detail to the mother at a later time. Anything within reason could be asked for, for "no matter what it costs them, they are going to have that medicine." 675 756 425

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675 756 425 When the proper gifts had been collected, the boy's father loaded them upon a horse; he led it to the medicine man's lodge and tethered it a short way east of the tipi. Walking about the tipi counterclockwise in ceremonial custom, he passed through the door to be recieved by the shaman. Sitting by the medicine man at the west side of the lodge, the father offered smoke and stated the purpose of his visit. If the medicine man took the smoke it was an acceptance and the deal was closed.

The "sale" of power, it should be added, was not an alienation of the right of the original owner to use it himself. Our closest analogy is the revelation of a trade secret, use of which requires special talent. What the "seller" did was to prepare the neophyte in such a way that the guardian spirit of the medicine man would provide a vision visitation in which the power itself would be bestowed. No mortal could give supernatural power. He could merely lend his influence to lead to a cut-in.

The purchase of medicine was only a start on the road to success for young men. The most potent powers were never shared. Indeed, it was only when a shaman had more than one medicine that he was willing to sell an access to one of them. Then it was always his poorer. The presumable motivation is that prestige rests in rarity.

2: Lee T-5 (1855-1858) 1957
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made "a hit"—that the sharp eyes which could detect a 727
trail so far had failed to penetrate the thin veil which covered the deception. Up to this time, and never afterwards, did they attempt to open it, or exhibit any inclination to manage it themselves; nor did any other than Moko, the youngest wife of Big Wolf, ever have it in charge.

Moreover, I now became submissive, and when untied obeyed every order that was given me. I ran to the waterside and filled the Big Wolf's buffalo horn when he was thirsty, pounded his corn when he was hungry, spread his mattress and lighted his pipe, in fine, made myself generally useful. As Aikens had predicted, their vigilance did relax to such a degree that I was permitted to wander through the village, but not beyond it—to have a knife in my possession—to sleep without being bound—and so far ingratiated myself into their confidence and esteem that they christened me *Chemakacho*—"the good white man."

This was not done, however, until after I had entered 727
into a solemn league and covenant with the chief. It was 675
a singular bond, not to be found in any book or legal forms. A stick of wood eight or ten inches long and about two inches square was produced. On its different sides were carved numerous figures representing skeletons, scalps, tomahawks and other like devices. Receiving the stick from Big Wolf, I opened a vein on the back of my hand and carefully painted the carved characters with blood. The condition of this sanguinary agreement, as it was understood, at least by the party of one part, was that I would remain in the quiet and peaceable possession of said Big Wolf, his heirs and assigns, without any attempt, design, effort, idea, or intention of running away, while he, the aforesaid Big Wolf, on his part, for and in consideration thereof, covenanted, promised, bargained, agreed, and

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727 solemnly obligated himself, in case I did, to make a skele-
675 ton of me in the shortest possible space of time, according to the Indian statutes in such case made and provided.

727 Though closely observed, and confined within certain limits, like one out on bail in the old times of imprisonment for debt, I now enjoyed comparative freedom; and as day after day and week after week passed wearily away, had opportunities of observing their habits, customs, and peculiarities, and to become thoroughly conversant with life in a Comanche camp.

727 As before stated, the sole business of the male portion
701 of the tribe was war and hunting. While in camp the Indian is idle, listless, sleeping the greater part of the day and all night. He is slovenly in his dress, except when he meets in council or goes on the war path, when he decorates himself with the scalps he has taken, which at other
727 times hang in his tent. His prowess as a warrior is estimated
701 in proportion to the number he possesses.
554 The most renowned brave in the camp of the Big Wolf—he who could boast the possession of the greatest number of these trophies—was *Hawakakeno*, the Wide River. He was, indeed, a brawny and powerful savage, terrible in battle and quarrelsome in the village. He was feared as well as admired; his word was law among his weaker brethren, and none of all his tribe could stand before him in single contest.

224 To supply the necessaries of life, more or less are con-
492 strained daily to go out upon the hunt. In this, their only labor, they range within a circuit rarely extending more than four or five miles from the town. Their weapons, on these excursions, are the bow and arrow and the lance, both of which they use with great dexterity and skill, especially on horseback. Indeed, in the matter of horsemanship, I

3: Wallace & Hoebel E-4, 5 (1933, 1945) 1952
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Government and Law

Among settled peoples with fixed property and diversified economics, the institution of land tenure, the disposition and inheritance of property, the treatment of chattels, and the obligations of contract form the most important aspects of civil law. Yet among the Comanches these had almost no significance. The Comanches had no concept of land value. As herding hunters, land was a matter of unconcern for them, being held neither individually, jointly, nor communally. One may speak of their country as being merely communally occupied. There are no records of any disputes between the bands over hunting grounds. The external boundaries of the Comanchería were not firmly fixed, but vaguely felt. Allies and friends were welcome to hunt and visit, but other outsiders entered on peril of their lives.

Wealth for the Comanches centered largely in horses, as has already been shown; horses were individually owned by both men and women. They were acceptable as a medium of exchange and could be used as payment of obligations in damage suits. Women, too, might be listed in the category of chattel property—first of father and brother and later of husband. Dogs must also be included under the heading of private property. They abounded, but after the acquisition of the horse had little economic value or importance save as camp scavengers and sentries. The idea of liability for the acts of animals did not exist. There was no recompense for a dog bite; nor could damages be collected for injuries received from a kicking horse.

The Comanches owned a number of captives who were chattel property until adopted as brothers by their owners if they were boys or married by their captors if they were girls. There were a few personal slaves held by blood covenant by individual warriors. They were generally captives, Mexicans forming the bulk of the number. A blood ceremony, according to Josiah Gregg, was performed with blood taken from a vein on the back of the captive's hand or arm. The ceremony was repeated whenever ownership of the slave changed. The slave had the right of life, food, and protection, since no one dared molest the property of another, and the owner could sell or transfer him at any time to whomever he chose.[25] There are indications that the Comanches captured and sold slaves merely as articles

[25] Gregg, *op. cit.*, 434.

3: Wallace & Hoebel E-4, 5 (1933, 1945) 1952
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herd at the death of the owner was prejudicial to tribal interest, for, since the animals were freely lent, several people might be dependent upon one man's herd for their mounts, and they would be seriously handicapped in hunting and in war if the animals were killed. Also, in case of food shortage, horses were food. By 1870 it had become customary to kill only the deceased's favorite mount and to distribute the remainder of his horses among the surviving relatives and friends. No absolute rule governing this distribution had been developed, with the result that there was often hard feeling among the heirs. The culture apparently was moving toward a settlement of the problem through bequests and recognition that certain relatives and close friends had the right to take their choice of the property, but the lines were not yet clear.[26]

Although there seems to have been no absolute consistency in rules of disposal, property appears to have passed to the widow, upon whom the obligation to share with others was imposed. She could not retain all the property herself. The first outside claim could be that of the deceased's best friend. He was entitled to the favorite horse, if it was not slaughtered at the grave. During the later period, a man often expressed the desire that his horse be given to a specified friend rather than slaughtered. Surplus horses went to the wife, father, mother, brothers, and other relatives according to the degree of relationship. Outsiders who had no personal claim to share in the estate could establish an obligatory claim either by providing property of their own to be buried with the person or by being helpers in mourning who "wailed a dead person until they received sufficient gifts from the man's relatives to stop."[27] If death occurred in battle, the amount of wailing and the value of goods demanded in payment might be increased.

Contract occurs when a party assumes a definite and limited obligation by virtue of agreement. The contractural arrangement is ended when the obligation has been fulfilled. Included among Comanche contractural agreements were the transfer of medicine powers, curing, the obligation to lead a revenge war party, occult prophecy, sorcery for hire, and hiring a specialist to help in the making of material objects such as arrows, saddles, and tipis. In the making of most con-

[26] Linton, *The Study of Man*, 297.
[27] Neighbors, "The Naüni or Comanches of Texas," *loc. cit.*, 133–34.

3: Wallace & Hoebel E-4, 5 (1933, 1945) 1952
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675 tracts there were certain solemn steps customarily followed. The most common method of sealing the contract was by offering smoke. If the second party took the smoke, it was an acceptance and the deal was closed. The failure of one of the parties to meet the terms of the contract terminated the contractural obligations of the other. In cases where such a procedure worked an injustice on one of the parties, the legal procedure followed the same general pattern as in other cases of disputes—if the aggrieved party felt inclined to act. He was, however, under no social pressure to proceed, as was the man who had suffered impingement on his rights as a husband. The contract situation rarely involved prestige rivalry and did not contain the spark plug that ignited legal action as in the highly charged adultery and wife-absconding situations.